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September 13, 2022

VIA EMAIL: bsteele@gazettenet.com

Re: Response to Public Records Request

Dear Mr. Steele:

Sullivan, Hayes & Quinn, LLC and I represent the Northampton Public Schools and City of Northampton. This letter responds to your public records dated August 29, 2022 to the City's Records Access officer in which you request the following records:

- Any document that can be reasonably described as an investigative report compiled by Attorney Regina Ryan¹ and/or her company, Discrimination and Harassment Solutions LLC, during the calendar year 2022 regarding matters at Northampton High School.
- Any document that can be reasonably described as "a redacted summary" of the above-described report. Such a "redacted summary" was shown to members of the School Committee, according to the vice chair's comments to me in my capacity as a member of the media.
- Any and all emails and other written communications between former Superintendent John Provost and Attorney Regina Ryan during the calendar year 2022.

It is undersigned counsel's understanding that this request is duplicative of a records request that you sent to the School District and directed to the School Committee Clerk & Assistant to the Superintendent in or around July 5, 2022, which she received in August, and serves as a response to the same.

I. Personnel Files Exemption Under M.G.L. Ch. 4, § 7 (26)(c)

The personnel files clause under M.G.L.C. Ch. 4, § 7 (26)(c) exempts from disclosure all personnel information that relates to an identifiable individual and is of a "personal nature." See

¹ The original request was for an investigative report and emails involving an "Attorney Marian Ryan". Please be advised that no responsive documents involving a person named Marian Ryan exist.

Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). In this regard, personnel information that is “useful in making employment decisions regarding an employee” may be withheld from public disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App Ct. 1, 5 (2003). See also, Wakefield Teachers Ass’n, 431 Mass. at 797, 731 N.E.2d 63 (2000) (holding that disciplinary report was “personnel information” and was therefore exempt from disclosure under public records statute). The requested documents concern a workplace investigation and the information contained in them is for the purposes of making employment determinations and is, therefore, exempt from disclosure. The requested information also contains personnel record information of individuals other than the subject of the investigation, which is also exempt from disclosure.

II. Privacy Exemption under M.G.L. Ch. 4, § 7 (26)(c)

When determining whether the privacy clause of Exemption (c) applies to a record, the following factors must be considered:

- (1) Whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources.

See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 (2017)

The submitted request asks for documents pertaining to a workplace investigation into allegations of misconduct. The requested documents describe the complaints and nature of the complaints against an accused individual (some of which contains private information about the complainants and/or students), describes the alleged misconduct in detail, contains information about the personnel (including disciplinary) record of other employees, contains witness statements, contains information about the emotions and reactions of witnesses during witness interviews, and contains information about the alleged conduct of not only the respondent in a workplace investigation, but individuals other than the respondent. It includes statements from witnesses utilized to adduce facts in the investigation to determine whether the alleged misconduct of the respondent and/or other individuals occurred, and therefore, whether adverse employment action, is or was necessary to be taken.

Accordingly, the requested records are exempt from disclosure because they would necessarily involve a breach of the privacy of not only the accused in the investigation, but witnesses and complainants, whose identities would be identifiable by people within the School community from even if names are redacted from the report. Such a breach of privacy and disclosure of information would tend to have a chilling effect on witness participation in workplace investigation matters. Further, in addition to the nature of the investigation and its detail and witness names and statements and information contained in personnel files or involving personnel matters and misconduct, sensitive student educational record information is not subject to disclosure on privacy grounds. In addition to the exemption under M.G.L. Ch. 4, Sec. 7 (26)(c), some of the information

in the documents is also exempted under M.G.L. Ch. 4, § 7 (26)(a) as it contains information from parent complainants or from students that would broadly be construed as student educational record that is specially or by necessary implication exempted from disclosure under FERPA and the Massachusetts student records law.

III. Attorney Client Privilege Exemption

With respect to the documents requested, other than those responsive emails attached hereto, the documents requested are further protected by Attorney-Client privilege because they were made for the purpose of providing legal advice to the public client, made in confidence, and made without waiver. While the investigation was conducted by an outside investigator under contract with the District, the investigation was directed on the advice of the District's legal counsel and its conclusions were provided to the District's legal counsel for the provision of legal advice to the District regarding the workplace complaints, rendering legal advice regarding personnel decisions to be made, and legal strategy in connection thereto. Any redacted versions of a report that may have been provided to the School Committee was done for the purpose of legal counsel advising the District on legal matters in connection to the workplace personnel issue.

IV. Conclusion

Emails subject to public records disclosure between John Provost and Attorney Regina Ryan that are not exempt from disclosure are attached hereto.

You have a right to appeal the response to your request pursuant to M.G.L. Ch. 66, Section 10A(a) and the right to seek judicial review as to an unfavorable decision by commencing a civil action in Superior Court pursuant to M.G.L. Ch. 66, Section 10A (c).

Kind regards,

SULLIVAN, HAYES & QUINN, LLC

/s/ Layla G. Taylor

Layla G. Taylor, Esq.

Enc. Attachment

cc: Gina-Louise Sciarra, Mayor
Jannell Pearson-Campbell, Interim Superintendent of Schools